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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: APR 05 2004

IN RE: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Officer in Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Greece who entered the United States without inspection in 1979. In 1993, the applicant was granted voluntary departure. The applicant failed to depart in a timely manner and failed to surrender for deportation. The applicant claims to have departed from the United States and to have reentered by jumping ship in 1996. On April 7, 2000, the applicant married a United States citizen. On March 22, 2002, the applicant was again apprehended by immigration officials and on April 11, 2002, he was ordered deported pursuant to section 241 of the Immigration and Nationality Act (the Act). On April 24, 2002, the applicant was returned to Greece at government expense. On August 21, 2002, the applicant was found by a consular officer to be inadmissible to the United States for having accrued unlawful presence pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(i). The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his wife.

The officer in charge (OIC) determined that the discretionary factors pertaining to the hardship of the applicant's spouse do not outweigh the seriousness of the applicant's lack of respect for the law. *See* Decision of the Officer in Charge, dated June 3, 2003. The AAO notes that the Form I-292 Decision page announcing the decision states that the OIC is denying the applicant's Application for Waiver of Ground of Excludability (Form I-601). *Id.* However, as the focus of the discussion and the final determination of the OIC contained therein address the applicant's Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), the AAO likewise focuses on the Form I-212 and arrives at a decision solely regarding appeal of the Form I-212.

On appeal, the applicant's spouse stated that she needs the applicant in her life and that she is unable to relocate to Greece to be with him. The applicant's wife asserts that the applicant was ignorant of U.S. immigration laws when he failed to comply with his removal order in 1990 and should not be punished. *See* Letter from [redacted] dated July 1, 2003. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

> (9) Aliens Previously Removed.-
>
> (A) Certain aliens previously removed.-
>
> . . . .
>
> (ii) [A]ny alien . . . who-
>
> (I) Has been ordered removed under section 240 or any other provision of law . . . is inadmissible.
>
> . . . .
>
> (iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign

> contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

> In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factors in the application are the hardship imposed on the applicant's wife by his inadmissibility to the United States.

The record reflects that the applicant's wife recently underwent surgery on a tumor at the base of her head and cervical laminectomy surgery. *See* Medical Records from Massachusetts General Hospital, faxed on July 11, 2002. *See also* Letter from [redacted] dated July 9, 2002. While her condition is lamentable, the record also reflects that the applicant married his U.S. citizen wife after he was ordered removed from the United States. The Seventh Circuit Court of Appeals held in *Garcia-Lopez v. INS,* 923 F.2d 72 (1991), that less weight is given to equities acquired after a deportation (removal) order has been entered. Furthermore, the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992). The AAO finds that the applicant's wife should have been aware that the applicant remained in the United States in an illegal status and was subsequently ordered removed. Hardship to the applicant's wife will thus be given diminished weight.

The unfavorable factors in the application include the applicant's entry without inspection in 1979 and the termination of the applicant's conditional resident status owing to his implication in a marriage fraud scheme with his second U.S. citizen wife. Other unfavorable factors in the application include the applicant's noncompliance with the terms of voluntary departure; the applicant's recent removal from the United States at government expense and the applicant's accumulation of unlawful presence resulting in inadmissibility to the United States which requires him to additionally seek an approved Waiver of Grounds of Excludability (Form I-601). The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. *See Matter of Lee,* 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from his disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in his application outweigh the unfavorable factors. The OIC's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret,* 15 I&N Dec. 620 (BIA 1976). The applicant failed to establish that he warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed

ORDER: The appeal is dismissed.